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January 8, 2016

VIA ELECTRONIC CASE FILING

The Honorable Charles R. Breyer
United States District Court
Northern District of California

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:15-md-02672-CRB, MDL No. 2672

Dear Judge Breyer:

Bruce L. Simon and the firm of Pearson, Simon & Warshaw, LLP ("PSW"), hereby respectfully apply for a position as Plaintiffs' Lead Counsel or Steering Committee Member.

The Court is familiar with my leadership skills and ability to manage complex MDLs, both based on my experience in this courthouse and the work I did with Your Honor while at my prior firm in *Air Passenger*, MDL No. 1793, and *Methionine*, MDL No. 1311. I know what it takes to successfully litigate a complex MDL such as this, and have done so all the way through trial, including in front of Judge Illston in 2012 in *TFT-LCD*, MDL No. 1827. I also know Your Honor's individual practices and views on preserving resources, keeping cases moving, and avoiding unnecessary battles, and I am proud of my firm's reputation and track record of prosecuting cases in an efficient and cost-effective manner.

PSW and I have been involved in some of the largest and most groundbreaking class actions in the United States. We are also one of the only firms submitting applications to Your Honor that has previously litigated a consumer class action against Volkswagen (*Olson v. Volkswagen of America, Inc.*, No. CV 07-05334 (C.D. Cal.)). If appointed, we will vigorously protect the interests of the class and do everything we can to assure that this Court is proud of the way this important MDL proceeding is handled.

1. Professional Experience in This Type of Litigation

PSW has substantial experience handling complex consumer class actions that involve the types of claims asserted in this case. We specialize in national and multi-party class actions that present cutting edge issues in both substantive and procedural areas. Our attorneys have served as lead or co-lead counsel in prominent and noteworthy MDLs and have repeatedly shown an ability to lead cases efficiently and cost-effectively. We have directly applicable experience prosecuting class actions involving defective automotive parts as well as consumer fraud, high-technology, products liability, and antitrust class actions. The following are just a

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few examples of such cases: *Olson v. Volkswagen of America, Inc.*, No. CV 07-05334 (C.D. Cal.) (“*Volkswagen*”): PSW pioneered this class action against Volkswagen alleging that it failed to disclose to consumers defects in the timing belt system in certain Audi and Volkswagen vehicles. The case resulted in a nationwide class settlement that provided, among other things, 100% reimbursement for class members’ out-of-pocket costs associated with timing belt failures; *In re Carrier IQ, Inc. Consumer Privacy Litig.*, MDL No. 2330 (N.D. Cal.) (“*Carrier IQ*”): PSW serves as co-lead counsel with Hagens Berman in this consumer MDL that alleges software installed on millions of mobile devices illicitly logged and sent users’ sensitive information to third parties. Significantly, this case involves claims under the consumer protection laws of numerous states that will likely come into play in this case; *Senne v. Office of the Commissioner of Baseball*, No. 14-cv-00608 (N.D. Cal.) (“*MLB*”): PSW serves as co-lead counsel in this class action challenging a decades-long wage scheme forced upon minor league players by Major League Baseball, its member franchises, and former commissioner, Bud Selig. Plaintiffs recently secured conditional certification pursuant to the Fair Labor Standards Act and were granted the right to provide notice to the class of minor league players; *In re Credit Default Swaps Antitrust Litig.*, MDL No. 2476 (S.D.N.Y.) (“*CDS*”): PSW served as co-lead counsel with Quinn Emanuel in this MDL alleging a conspiracy among the world’s largest banks to maintain opacity of the credit default swaps market as a means of maintaining supracompetitive prices of bid/ask spreads. The parties reached a landmark settlement—pending final approval in April 2016—totaling \$1.86 billion, making it one of the largest civil antitrust settlements in history; *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (“*TFT-LCD*”): PSW served as co-lead counsel (and I as co-lead trial counsel) with Lieff Cabraser on behalf of direct purchasers in this price-fixing MDL, which proceeded to trial and resulted in a jury verdict of \$87 million before trebling against the last remaining defendant. In total, we recovered over \$473 million for the direct purchaser class.

In addition to the above cases, I have served (or am currently serving) as lead or co-lead counsel in multiple other MDLs and complex consumer class actions, many of which are listed in my attached resume (Exhibit 1) and on our firm’s website, at www.pswlaw.com/notable-cases.

2. Names and Contact Information of Judges From Matters Discussed Above

Volkswagen: Hon. Manuel L. Real, (213) 894-5696

Carrier IQ: Hon. Edward M. Chen, (415) 522-2034

MLB: Hon. Joseph C. Spero, (415) 522-2035

CDS: Hon. Denise L. Cote, (212) 805-0202

TFT-LCD: Hon. Susan Illston, (415) 522-2028

3. Willingness and Ability to Immediately Commit to Time-Consuming Litigation

We are cognizant of the Court’s position that this case should resolve quickly, and those appointed should not run up unnecessary fees and costs. However, we are no strangers to litigating cases through years of motion practice, discovery, and trial, and will dedicate whatever time is necessary to successfully resolve this case. As an example, we pursued the *TFT-LCD* case for more than five years and went through a six-week trial, ultimately obtaining a successful jury verdict. During the course of that litigation, my firm and I also served as lead or co-lead counsel in a number of other class actions, and we have always shown an ability to manage multiple cases concurrently with proper staffing and allocation of resources.

In addition to me, a talented team of attorneys from PSW will devote time to this case, including my partner Daniel L. Warshaw, who has significant experience in complex cases

involving consumer protection issues. Mr. Warshaw has held leadership positions in cases embracing a wide range of industries and subject matters, including automotive, high-technology, and consumer products. Of particular relevance here, Mr. Warshaw was the lead attorney in the *Volkswagen* matter and is highly knowledgeable about automotive defects.

4. Willingness and Ability to Work Cooperatively with Others

PSW has worked effectively with the firms mentioned above as well as those firms listed in Exhibit 2, who support our appointment herein. We use an inclusive management style and routinely seek input and participation from our colleague firms, while always being careful not to duplicate efforts in large, multi-party cases. We also have direct experience working opposite defense counsel in this case, Herzfeld & Rubin, from the *Volkswagen* matter.

5. Access to Resources to Prosecute the Litigation in a Timely Manner

PSW has repeatedly demonstrated that it is willing and able to commit the resources necessary to prosecute complex class actions in a timely manner. This was evident in our recent success in *CDS*, during which my firm and Quinn Emanuel managed the review of nearly 12 million documents, engaged in multiple rounds of discovery, and took dozens of depositions of key witnesses all in a span of less than two years. Our efficient work in obtaining the outstanding settlement in that case was epitomized in the words of our mediator, the Honorable Daniel Weinstein, who said: “Given the legal and factual risks Plaintiffs faced, the monetary result achieved for the Class is, in my judgment, exceptional. I would go so far as to say that, *in 30-plus years of mediating high-stakes disputes, this was one of the finest examples of efficient and effective lawyering by plaintiffs’ counsel that I have ever witnessed.* I have rarely, if ever, observed a Plaintiff in a case of this complexity and size, achieve a result of this magnitude with the speed that Plaintiffs achieved here.” MDL No. 2476, Dkt. No. 447 (emphasis added).

PSW has shown, through cases such as *CDS* and *TFT-LCD*, that it can contribute millions of dollars in costs to fund large-scale litigation. Our experience has taught us that it is necessary to commit substantial resources, both financial and otherwise, to successfully prosecute complex MDLs such as this. We stand ready to do so in this case.

6. Willingness to Serve as Lead Counsel and Member of a Steering Committee

I am willing to serve as either lead counsel or a member of a steering committee and apply herein for both positions.

7. Particular Category or Categories of Plaintiffs I Want to Represent

I would be honored to represent any class of plaintiffs in this litigation and believe I could do so effectively. However, bearing in mind the Court’s inclination to proceed on separate tracks for consumers and dealerships, I would apply to specifically represent consumers.

8. Any Other Considerations That Qualify Me for a Leadership Position

As outlined above, my firm has the requisite experience, knowledge, resources, and ability to lead this case to resolution. I appreciate Your Honor’s consideration of my application.

Respectfully,

Bruce L. Simon